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MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

## No. 73-2058

**October Term, 1973**

COMMONWEALTH OF PENNSYLVANIA,
*Petitioner,*

vs.

RONALD O'SHEA,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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## INDEX.


| | Page |
|---|---|
| Opinion Below | 1 |
| Statement of Jurisdiction | 2 |
| Question Stated for Review | 2 |
| Constitutional Provisions Involved | 2 |
| Statement of the Case | 2 |
| Argument | 5 |
| Reason for Allowance of Writ | 5 |
| I. The Pennsylvania Supreme Court has misconstrued the Fifth Amendment to the United States Constitution and refused to recognize relevant decisions of your Honorable Court under *Miranda v. Arizona*, 384 U.S. 436 (1966) in holding that, under the circumstances of this case, a voluntary statement given to police by Respondent at the Police Station was the product of a "custodial interrogation" and thus inadmissible at trial. | 5 |
| Conclusion | 12 |
| Appendix A—Opinion of the Supreme Court of Pennsylvania in *Commonwealth v. O'Shea* | 13 |
| Appendix B—Opinion of the Court of Common Pleas of Allegheny County, Pennsylvania | 18 |
| Order of Court | 28 |
| Appendix C—Excerpts from Suppression Hearing Transcript | 29 |
| Appendix D—Excerpts from Trial Transcript | 38 |

II.

## TABLE OF CITATIONS.


Page

Commonwealth v. O'Shea, .... Pa. ...., 318 A.2d 713 (1974) ..... 1, 5
Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758 (1969) 6, 7
Fisher v. Scafati, 439 F.2d 307 (5th Cir., 1971) ..... 10
Freije v. United States, 408 F.2d 100 (1st Cir., 1969) 8, 10
Hicks v. United States, 382 F.2d 158 (D.C. Cir., 1967) 8, 10
Iverson v. State of North Dakota, 480 F.2d 414 (8th Cir., 1973) ..... 7, 9
Lowe v. United States, 407 F.2d 1391 (9th Cir., 1969) 8
Miranda v. Arizona, 384 U.S. 436 (1966) ....2, 3, 5, 6, 7, 8, 10, 11, 12
People v. Bailey, 304 N.E. 2d 668 (1973) .....10, 11
State of Michigan v. Tucker, .... U.S. .... (filed June 10, 1974) ..... 11
United States v. Gibson, 392 F.2d 373 (4th Cir., 1968) 8
United States v. Hall, 421 F.2d 540 (1969) ..... 6, 8


### STATUTE.


28 U.S.C. Section 1257 ..... 2


### CONSTITUTIONAL PROVISIONS.


Constitution of the United States, Fifth Amendment . 2, 5
Constitution of the United States, Fourteenth Amendment ..... 2


### RULE.


Rule 23 ..... 1

In the

# Supreme Court of the United States

No. ..... October Term, 1973

COMMONWEALTH OF PENNSYLVANIA,

*Petitioner,*

vs.

RONALD O'SHEA,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, the Commonwealth of Pennsylvania, by its Attorneys, John J. Hickton, District Attorney of Allegheny County, Pennsylvania, and John M. Tighe, First Assistant District Attorney, respectfully prays that a Writ of Certiorari issue to review the Opinion of the Supreme Court of Pennsylvania entered in this proceeding on April 23, 1974, relating to the Respondent, Ronald O'Shea.

Pursuant to Rule 23 of this Honorable Court, your Petitioner respectfully represents as follows:

### Opinion Below.

The Opinion of the Supreme Court of Pennsylvania is reported at: *Commonwealth v. O'Shea,* .... Pa. ...., 318 A. 2d 713 (1974) and appears in Appendix "A" hereto.

## Statement of Jurisdiction.

1. The Opinion of the Supreme Court of Pennsylvania was entered on April 23, 1974, and this Petition for Writ of Certiorari was filed within ninety (90) days of that date.

2. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. Section 1257.

## Question Stated for Review.

Whether the Supreme Court of Pennsylvania has misconstrued the Fifth Amendment of the United States Constitution and has refused to recognize relevant decisions under *Miranda v. Arizona,* 384 U.S. 436 (1966), in holding that under the circumstances of this case, a voluntary statement given police by the Respondent at the police station was the product of a "custodial interrogation" and thus inadmissible at trial?

## Constitutional Provisions Involved.

The Fifth Amendment to the Constitution of the United States in pertinent part provides: "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself."

The Fourteenth Amendment to the Constitution of the United States in pertinent part provides "... nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## Statement of the Case.

Respondent was indicted on a bill alleging Murder and Voluntary Manslaughter. Prior to trial, Respondent filed a

Motion to Suppress a confession he gave to the police on the day following the murder. Respondent's motion was denied on March 17, 1972. A trial commenced on March 20, 1972 before a judge and a jury of twelve. On March 22, 1972, the jury found the Respondent guilty of First Degree Murder and he was sentenced to undergo imprisonment for life. On March 29, 1972, Respondent filed a Motion for a New Trial and In Arrest of Judgment, alleging therein that: 1) the verdict was against the law; 2) the verdict was against the evidence; and 3) the verdict was against the law and the evidence. Following a hearing before a Court *en banc* on July 21, 1972, Respondent's post-trial motions were denied. The Opinion of the trial Court is attached hereto as "Appendix B".

Following the denial of his post-trial motions, Respondent appealed to the Supreme Court of Pennsylvania alleging that he was deprived of his constitutional privilege against self-incrimination as propounded by your Honorable Court in *Miranda v. Arizona,* in that he was not advised of such rights prior to initial investigatory questioning by the police. On April 23, 1974, after argument before the Supreme Court of Pennsylvania, that Court in a 5-2 decision entered an Order reversing the lower Court and ordering a new trial on the basis that *Miranda v. Arizona* was applicable to the factual circumstances of this case and the failure to advise Respondent of his constitutional rights at the initiation of the interrogation tainted the subsequent confession and it was error to allow its admission into evidence.

The facts of the instant case, as revealed by the record, are as follows: On October 27, 1971, the body of one Thomas Washington was found murdered in his apartment in Pittsburgh, Pennsylvania. The only information possessed by the investigators concerning the activities of the victim on the day

of his death were that Washington and the Respondent had been seen together that day and the Respondent's fingerprints were found in the victim's apartment. Based upon this information, the next day officers went to the Respondent's last known address and, finding him absent from home, left a card with his girlfriend indicating the police wished to speak with Respondent (ST 29).[1] Three hours later, Respondent voluntarily telephoned police and then proceeded to the police station to discuss the matter, arriving at approximately 12:35 A.M. on October 29 (ST 29). Pertinent provisions of the Suppression Hearing Transcript are attached hereto as "Appendix C"; pertinent provisions of Trial Transcript are attached hereto as Appendix "D". The record indicates that at the time Respondent entered the station he was not a suspect in the case (ST 34).

> Q. So this initial conversation that you had with him prior to when you say he made something that you felt implicated him in the crime was unnecessary; is that right? You knew that he was a suspect in this crime at the time that you requested him to come in? A. No, sir.
> Q. No, sir? A. No, sir.
> Q. The beer can with his fingerprint on it was in the victim's room? A. Well, this indicated that he was in the room, but it didn't indicate that he killed the man.

It was not until the Respondent denied seeing the victim or being to his house that he became a suspect in the case. The record provides at Page 56:

> Q. What was it he said in the initial ten to fifteen minutes that led you to believe that he was a suspect and led you to read him those rights? A. Well, he stated that he had not seen the victim, or that two weeks prior to the victim's death was the last time that he had seen the vic-

[1] Numerals in parentheses preceded by the letters "ST" refer to the pages of the Suppression Transcript.

tim, and he had not been in the victim's house and did not know where the victim lived.

At the point, Respondent was given his Miranda warnings and custodial interrogation began. Subsequently, Respondent confessed to the murder.

## ARGUMENT.

### Reason for Allowance of Writ.

**I. The Pennsylvania Supreme Court has misconstrued the Fifth Amendment to the United States Constitution and refused to recognize relevant decisions of your Honorable Court under *Miranda v. Arizona*, 384 U.S. 436 (1966) in holding that, under the circumstances of this case, a voluntary statement given to police by Respondent at the Police Station was the product of a "custodial interrogation" and thus inadmissible at trial.**

In *Commonwealth v. O'Shea*, ..... Pa. ....., 318 A.2d 713 (1974), the Pennsylvania Supreme Court held that statements given by the Respondent to police prior to being advised of his constitutional rights, were the product of a "custodial interrogation" and thus tainted his subsequent confession, making it inadmissible at trial. It is the Commonwealth's contention that this holding is incorrect and is an over extension and misinterpretation of your Honorable Court's decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S. CT. 1602 (1966) and cases decided thereunder. Rather, the Commonwealth submits that the 15 minute prewarning questioning of the Respondent was an investigatory procedure in which the police were attempting to discover facts which might lead them to a suspect. The police were merely responding to their

only lead, Respondent's association with the victim. To hold otherwise would be to disregard your Honorable Court's holding in *Miranda* that:

> ... this Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties—the limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we now noted, our decision does not in any way preclude police from carying out their traditional investigatory function. *Miranda v. Arizona,* 384 U.S. at 481.

The Pennsylvania Court has misconstrued the facts and has misapplied the controlling legal standard.

In *Miranda,* the decisive stage there articulated when an individual becomes entitled to his constitutional warnings was that point when custodial interrogation began. The Court explained what it meant by that phrase at 384 U.S. 444: "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." In a footnote, the Court indicated then that "custodiai interrogation" is what they meant in *Escobedo* when they spoke of an investigation which had focused on an accused. While this footnote had caused must confusion in drawing the line at which police questioning becomes custodial, Judge Friendly, writing for the 2nd Circuit in *United States v. Hall,* 421 F.2d 540 (1969) explained: "it is equally plain that 'focus' alone does not trigger the need for *Miranda* warnings. As appears from the first *Escobedo* extract we have quoted custody as well as focus and other factors were essential to that decision. Under *Miranda* custody along suffices, 384 U.S. at 444, 478, 86 S.Ct. 1602. We fail to perceive how one can reason from these two propositions to a

conclusion that 'focus' alone is enough to bring *Miranda* into play. The only possible basis for such an argument would be that, after limiting *Miranda* to custodial interrogation and defining this as "questioning initiated by law enforcement officers after a person has been taken into custody, or otherwise deprived of his freedom of action in any significant way," 384 U.S. at 444, 86 S.Ct. at 1612, Chief Justice Warren dropped a footnote: "'This is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused. While much dialectic skill has been expended on this footnote, the one thing that is undeniable is that the opinion said that focus means custody, not that custody means focus." This position was reiterated in *Iverson v. State of North Dakota,* 480 F.2d 414 (8th Cir. 1973) where the Court stated at 423 that "Focus alone is not enough to bring *Miranda* into play."

It is clear from its opinion in the instant case, that the Pennsylvania Supreme Court is applying the incorrect legal standard when they held:

> Although Miranda warnings are not required before interviewing all possible witnesses to the crime, they are required "whenever an individual is questioned while in custody *or* while the object of an investigation of which he is the *focus* . . ." Here the police questioned appellant in the middle of the night in a private room in the police building knowing that appellant had been in the room where the victim was murdered on the day of the murder. It is clear that at this point in time the police investigation had *focused* upon appellant.

However, the focus test derived from *Escobedo v. Illinois,* 378 U.S. 478, 84 S.Ct. 1758 (1969), is not the appropriate test. Certainly, the police had "Focused" upon the Respondent more than upon all other residents of Pittsburgh; on the other hand, the focus was not so sharp that they had anything approaching certain or probable cause to believe Respondent was the murderer.

In *Lowe v. United States*, 407 F.2d 1391 (9th Cir. 1969), the Court stated at 1396:

> "The relevance of 'police intent' is not apparent from the *Miranda* decision. The Court's decision in *Miranda* clearly abandoned 'focus of investigation' as a test to determine when rights attach in confession cases . . . The test now is whether or not the person 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.' "

In the instant case, the Pennsylvania Court asserts that the questioning was "custodial" since it took place at the station house. However, questioning of a witness cannot be characterized as "custodial interrogation" simply because it occurs at a police station, *Hicks v. United States*, 382 F.2d 158 (D.C. Cir., 1967), *Freije v. United States*, 408 F.2d 100 (1st Cir., 1969). But rather, since an exact definition of "custodial interrogation" is by its nature an impossibility, the problem must be approached on a case-by-case basis, *United States v. Gibson*, 392 F.2d 373 (4th Cir., 1968).

In *United States v. Hall, supra*, Judge Friendly stated that the test to be applied must be an objective one. "The test must thus be an objective one. Clearly the Court meant that *something* more than official interrogation must be shown. It is hard to suppose that suspicion alone was thought to constitute that something; almost all official interrogation of persons who later became criminal defendants stems from that very source. While the Court's language in *Miranda* was imprecise, doubtless deliberately so, it conveys a flavor of some affirmative action by the authorities other than polite interrogation."

In *Miranda*, the primary concern of the Court was with the "potentiality of compulsion" inherent in in-custody interrogations. The Court spoke of that case as one in which "an

individual is swept from his surroundings into police custody, thrust into unfamiliar atmosphere, held incommunicado, surrounded by antagonistic forces and run through menacing police interrogation procedure. Such is not the case here.

The Commonwealth contends that when the police went looking for Respondent on the evening of October 28, 1971, they were *investigating* the death of Thomas Washington. The police were merely responding to their only lead, Respondent's association with the victim. They were attempting to discover facts which might lead them to a suspect.

Further, the Pennsylvania Court held that not only because Respondent had been seen with the victim on the day of the murder, but also because his fingerprints were on two beer cans found in the victim's bedroom, Respondent was a suspect. The Commonwealth would point out that a beer can is not a dangerous or criminal instrumentality. To the contrary, a beer can is a social implement, entirely compatible with Respondent's known association with the victim.

Also, when defense counsel asked the arresting detective directly whether the Respondent was a suspect upon commencement of questioning by police, he answered, "No, sir." similarly, the record indicates that Respondent was not "in custody" prior to the warnings being given to him. At page 125, the record establishes:

> Q. Had he in fact tried to walk out of there, what would have happened? A. We would have let him go.

In situations similar to the one at bar, Courts have found questioning at the police station of individuals who later were found to be defendants to be non-custodial. In *Iverson v. State of North Dakota, supra,* where the police knew that the defendant reportedly had scratches on his arms and face and had been seen with the murder victims less than 48 hours before

their demise, the Court held that a twenty-minute questioning of the defendant at the police station was investigatory and not custodial, therefore rendering his statements admissible.

Certainly, the nexus between scratches on the arms and back of the defendant in conjunction with the fact that defendant had been seen with the victims before their demise was much more indicative of criminal activity than the facts possessed by the Pittsburgh Police in the instant case. However, the court held that the questioning was non-custodial, but rather investigatory in nature.

In *Hicks v. United States, supra,* the Court held that the defendant's oral admission that she had stabbed the victim was not excludable on grounds it was the product of a custodial interrogation, where the defendant was at the scene of the murder and voluntarily went to the police station with the police and ultimately confessed. In *Freije v. United States, supra,* the Court held that when F.B.I. agents had reason to suspect the defendant was dealing in stolen cars and an interview was requested by Federal agents, when the defendant voluntarily went to the police station, his statements made there were voluntary, noncustodial, and admissible despite the lack of *Miranda* warnings. In *Fisher v. Scafati,* 439 F. 2d 307 (5th Cir. 1971), police in investigating a murder had information that the defendant had left the party where the homicide occurred, in a borrowed car. Although ultimately holding the defendant's confession inadmissible because the warnings given him were *incomplete,* the Court held that when the defendant was interviewed at the police station, it was not until he gave information in contradiction to that possessed by the police that the interrogation became custodial, thereby requiring *Miranda* warnings. Similarly, in the instant case, it was not until Respondent denied being at the victim's residence that *Miranda* became applicable. In *People v. Bailey,*

304 N.E. 2d 668 (1973), the Appellate Court of Illinois held that the defendant was not entitled to *Miranda* warnings until they learned the defendant in fact owned the gun which she had denied owning in giving her statement to the police at the station. Until that point in time, there was no reason for the police to have disbelieved the defendant's earlier exculpatory statement.

Recently, your Honorable Court had occasion to comment upon the scope, application and purpose of the broad prophylactic rules enunciated in *Miranda.* In *State of Michigan v. Tucker,* ..... U.S. ..... (filed June 10, 1974), Mr. Justice Rehnquist noted that "the privilege against self incrimination was aimed at a far reaching evil—a recurrence of the inquisition and the Star Chamber, even if not in their stark brutality." The Justice continued:

> The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least, negligent conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the Courts hope to instil in those particular investigating officers, or in their future counterparts, a greater degree of care towards the right of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.

The evils alluded to in the foregoing are not present in the instant case. In the case at bar, there was no reason for the Pittsburgh police officers to believe there was any unexplainable reason for the Respondent's fingerprints being on a beer can found in the home of the victim. The police were still investigating the death of Thomas Washington and they were still responding to their only lead, a social contact. It was not

until Respondent denied ever being to the home of the victim, that he became a suspect. At that point, *Miranda* became applicable. To hold that Respondent's constitutional rights were violated under the circumstances of the case would be to ignore the warning in *Miranda* that the decision there articulated was not intended to apply a constitutional straightjacket to law enforcement officials.

## Conclusion.

The Commonwealth asserts that the failure of the Pennsylvania Supreme Court to properly construe the decision of your Honorable Court in *Miranda v. Arizona* and cases decided thereunder was error. For the reason state above, it is urged that the petition be granted or, in the alternative, that the Pennsylvania Supreme Court be summarily reversed.

Respectfully submitted,

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JOHN M. TIGHE,
*First Assistant District Attorney,*

*Attorneys for Petitioner.*

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*Assistant District Attorney*

## Appendix A.

[J-96]

In the

**Supreme Court of Pennsylvania**

Western District

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COMMONWEALTH OF PENNSYLVANIA,

v.

RONALD O'SHEA,

*Appellant.*

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No. 2 March Term, 1973.

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### OPINION

Appeal from the Judgment of Sentence of the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division at No. 101 January Term, 1972.

NIX, *J.* Filed: April 23, 1974

Appellant, Ronald O'Shea, was found guilty by a jury of murder in the first degree. Post-trial motions were denied and a sentence of life imprisonment was imposed. This is a direct appeal from the judgment of sentence.

On the early evening of October 27, 1971, the body of the deceased, Thomas Washington, was found in his bedroom.

An autopsy revealed that asphyxiation due to strangulation caused his death. Beer cans, discovered in the bedroom and determined to have been purchased on the day of the murder, were found to contain appellant's fingerprints. The police also discovered that appellant was seen with the victim on the morning of the murder. The police, in the course of investigating the murder, sought to question appellant. When they were unable to locate him they left a message with his girlfriend that they wished to speak with him. In response to their request appellant went to the Public Safety Building at approximately 12:30 a.m. at which time he was taken to a private room and asked if he knew the victim and if he had ever been to or knew where the victim lived. Upon receiving answers contradictory to the information they had previously obtained, the police gave appellant his *Miranda* warnings for the first time. After confronting appellant with the contradictions between his answers to the initial, pre-warning questions and the evidence of his fingerprints on the beer cans, appellant waived his rights and made a statement in which he confessed his complicity in the crime. This statement was admitted into evidence.

Appellant contends that the lower Court erred in refusing to grant appellant's motion to suppress the confession on the ground that it stemmed from, and was impermissibly tainted by, the initial custodial interrogation which was illegal in that it was conducted without *Miranda* warnings in violation of appellant's rights against self-incrimination. *Miranda v. Arizona, 384 U. S. 436,* (1966); *Commonwealth v. Marabel,* 445 Pa. 435, 444, A. 2d , (1971). See also, *Commonwealth v. Brittain,* Pa. , n. 6, A. 2d

, n. 6 (1974); *Commonwealth v. Ware,* 438 Pa. 517, 265 A. 2d 790 (1970). We agree although *Miranda* warnings are not required before interviewing all possible witnesses to the crime, they are required "whenever an individual is questioned while in custody *or* while the object of an investigation of which he is the focus." *Commonwealth v. D'Nicuola,* 448 Pa. 54, 57, A. 2d (1972) quoting *Commonwealth v. Feldman,* 432 Pa. 428, 432-33, 248 A. 2d 1, 3 (1968). See also, *Commonwealth v. Yount,* Pa. , A. 2d (1974) [J-278 (1973)]. Furthermore, we have held that: " '[I]t is not simply custody plus "questioning," as such, which calls for *Miranda* safeguards, but custody plus police *conduct* . . . calculated to, expected to, or likely to, evoke admissions.' " *Commonwealth v. Yount, supra* at , A. 2d at , quoting *Commonwealth v. Simala,* 434 Pa. 219, 226, 252 A. 2d 575, 578 (1969).

This case is comparable to *Commonwealth v. D'Nicuola, supra* where the police, knowing only that D'Nicuola and the victim had failed to appear for an appointment and that a recently fired weapon was found in D'Nicuola's car, proceeded to question D'Nicuola without warnings while he was confined to a hospital bed. On those facts we held that he was a suspect and any questioning absent *Miranda* warnings was impermissible.

The instant case is at least as compelling. Here the police questioned appellant in the middle of the night, in a private room in the police building, knowing that appellant had been in the room where the victim was murdered on the day of the murder. It is clear that at this point in time the police in-

vestigation had focused upon appellant. *Commonwealth v. Romberger,* 454 Pa. 279, 283, A. 2d , (1973), *Commonwealth v. D'Nicuola, supra.*

Moreover, the test for custodial interrogation "does not depend upon the subjective intent of the law enforcement officer-interrogator, but upon whether the suspect is physically deprived of his freedom of action in any significant way or is *placed in a situation in which he reasonably believes that his freedom of action of movement is restricted by such interrogation . . .*". *Commonwealth v. Romberger, supra,* citing *Commonwealth v. Marabel, supra.* Under the circumstances of interrogation at that late hour in the police building "appellant could not reasonably have believed that his freedom remained unfettered . . . [W] must conclude that a reasonable man in appellant's situation would have clearly perceived the restraint upon his freedom" *Commonwealth v. Romberger, supra.*

The Commonwealth claims that the initial questioning was non-custodial and was simply an attempt to shed light on the circumstances surrounding the murder. We can find no basis for the Commonwealth's claim. Here appellant was asked questions to which the police already knew the answers. The police conduct was not an innocent attempt to gather information, because they already had this information. It was instead "likely to", if not "calculated to" or "expected to" evoke admissions and develop contradictions, *Simala, supra.* As events developed the police authorities were eminently successful and there is little question that this preliminary examination in which the appellant made these statements,

which were immediately shattered by the information in the possession of the police, was the reason for the subsequent inculpatory statement that was introduced against him at trial.(1) *Commonwealth v. Ware, supra* at 521, A. 2d at , cf. *Commonwealth v. Frazier,* 443 Pa. 178, 181, 279 A. 2d 33, 35 (1971).

Under these circumstances the failure to advise appellant of his constitutional rights at the initiation of the interrogation tainted the subsequent confession and it was error to allow its admission into evidence. In view of this conclusion we need not consider appellant's other contentions.

Accordingly, the judgment of sentence is reversed and a new trial is awarded.

Mr. Chief Justice Jones and Mr. Justice Pomeroy dissent.

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(1) One of the interrogating officers testified at the suppression hearing as follows:

"Q. All right. What, if anything, did he then say? A. Once we advised him that we did have his fingerprints in there, I guess he realized that we caught him in a lie—"

## Appendix B.

IN THE COURT OF COMMON PLEAS
Of Allegheny County, Pennsylvania
Criminal Division

---

COMMONWEALTH OF PENNSYLVANIA,

vs.

RONALD O'SHEA.

---

No. 101 January Sess. 1972.
(Murder)

### OPINION

Before: Weiss (specifically presiding) and Fiok, *JJ.*

FIOK, *J.*

The defendant was indicted at No. 101 January Sessions, 1972 for murder and voluntary manslaughter. On March 20, 1972, a trial by jury was commenced at the conclusion of which the defendant was found guilty of first degree murder. His penalty was set at life imprisonment. The sentence was stayed pending the filing of any post trial motions. This case comes before the Court on the filing of a timely motion for a new trial and in arrest of judgment.

Prior to the commencement of the case in chief, a suppression hearing was held on March 17, 1972 to suppress an alleged confession made by the defendant to the police as being taken in violation of the defendant's constitutional

rights. Detective Ralph Pampena of the Pittsburgh Homicide Squad testified that he first encountered Ronald O'Shea at 12:30 a.m. on October 29, 1971 at the Public Safety Building. The police had been looking for Mr. O'Shea to see if he could shed any light on the circumstances surrounding the brutal death of Thomas Washington on October 27, 1971. A message was left at his girl friend's home and the defendant came voluntarily to the Public Safety Building after midnight. At this time defendant was not a suspect in the case and was called in for routine questioning since the police had found his fingerprints on a beer can in the victim's apartment. After some general questioning about his background, conducted in the presence of Detectives Pampena, Shaulis, and McKay, the defendant was asked if he had seen the victim recently. He stated that he had not seen the victim for two weeks nor had he ever been in the victim's apartment or even knew where the victim lived. It was at this time that the defendant became a suspect. Officer Pampena suspended the questioning and read Mr. O'Shea the standard *Miranda* warnings concerning his constitutional rights of self-incrimination and the right to counsel. A signed waiver of rights was obtained with Mr. O'Shea's signature affixed thereto. This initial questioning lasted fifteen to twenty minutes. Detective Pampena stated that the defendant was alert at all times and answered quickly and in a manner which lead him to believe that the defendant was in full control of himself. The questioning continued and the defendant was confronted with his fingerprint found in the victim's bedroom and that he in fact lied to them when he said that he had never been to the victim's apartment. The questioning was interrupted by a visit from the defendant's girl friend, Patty Thompson, who was brought to the Public

Safety Building at her own request by Officer Freeman who had been at Miss Thompson's home doing some routine investigation work. The visit ended at 3:17 a.m. After she had left, Officer Freeman joined Detective Pampena and questioned O'Shea for twenty additional minutes whereupon he admitted that he was responsible for the murder. A taped statement was taken at 3:45 a.m. with Detective Freeman as the interviewer and in the presence of Detectives Pampena, Nestor, and Condemi.

The tape was placed in open Court. Contained on the tape were on the proper *Miranda* warnings given to the defendant by the police prior to the taking of the confession and the waiver of these rights by the defendant. At the end of the tape were questions asked of the defendant as to his treatment while in police custody. He answered that he had not been coerced or promised anything in the obtaining of the confession and that he had been treated well.

Detective Pampena testified that at no time was the defendant threatened or physically abused and that no threats were made upon defendant's girl friend. Officer Robert McKay was called as a witness and corroborated the testimony of Detective Pampena. McKay was present with the defendant up until 2:30 a.m. and saw no physical abuse or any evidence of mental coercion on the defendant.

Officer Ronald Freeman was called and he testified that he brought the defendant's girl friend, Patty Thompson, to the Public Safety Building on her own request and that she supplied the defendant with a hamburger and some cigarettes upon the defendant's request. Freeman also backed up the

testimony of the other detectives as to any alleged abuse of the defendant. The actual playing of the tape in open Court, and the manner in which the questions were answered dispelled any notion of the use of coercion tactics.

The defense offered only the defendant as a witness, who denied being read his rights. Although he recognized the signature on the warning form as his own, he said that the information was placed on it after he signed it. He stated that he was threatened that if he did not confess his girl friend would be arrested. He denied making any confession until December 9, 1971, although at a Coroner's hearing on November 15, 1971 the police introduced a signed confession from him.

The defendant's sole basis for his post-trial motions is the contention that the confession should have been suppressed because he was not advised of his constitutional rights immediately upon the commencement of questioning at the Public Safety Building. In the instant case we must examine then, the police procedure to discover whether the defendant's constitutional rights had been violated.

The starting point in all cases which question the admissibility of a confession is *Miranda v. Arizona,* 384 U. S. 436, 86 Supreme Ct. 1602, (1966). There the Supreme Court held:

> "To summarize we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self incrimination is jeopardized . . .

He must be warned . . . that he has the right to remain silent, that anything he says can be used against him . . ."

The first question to be resolved is whether the defendant was in fact a suspect and whether he was taken into custody and deprived of his liberty. The only information the police had was that a fingerprint of the defendant had been found on a beer can in the victim's bedroom. The police wanted the defendant to answer some routine questions. He came to the Public Safety Building voluntarily and of his own accord and the initial questioning was general and lasted about fifteen to twenty minutes. It was only after the defendant had stated that he had never been to the victim's apartment nor knew where he lived, in response to a question as to whether he had seen the victim, that the officer suspected defendant's criminal involvement. It was at this time that the questioning was suspended and the defendant was advised of his constitutional rights. Those cases which have held a person to be a suspect and thus be subject to custodial interrogation can clearly be distinguished from the facts of the present case.

In *Commonwealth v. Sites*, 427 Pa. 486, 235 A. 2d 387 (1967) the defendant was taken by the police from his father-in-law's home and the company of several people to his own home to be questioned "in private". The investigating officers knew that an automobile of the same color and make as the defendant's car was seen in the victim's driveway around the alleged time of the beating-murder. They also knew that the defendant had not been home on the night of the murder and they were able to observe that his right hand was badly

swollen and lacerated as if involved in some sort of physical contact.

In *Commonwealth v. Bennett*, 439 Pa. 34, 264 A. 2d 706 (1970) the defendant was questioned at his place of employment by the police who were conducting a routine investigation. He was asked to come to the police station and he voluntarily did so. The police questioned him about his whereabouts on the night in question and he gave conflicting answers. Instead of advising him of his rights, he was then asked to take a polygraph test to which he assented. The machine was not available at this time and he was allowed to go home with the understanding that he would return for the test. Six days later police officers went to his home and "escorted" him to the police station to take the test. The police questioned him in an accusatory manner. After reviewing the answers given during the test, the examining officer concluded that the defendant was not telling the truth and at this time advised the defendant of his constitutional right. In both of these cases the Court held that the defendants were suspects and subject to custodial interrogation.

Both of these cases are clearly distinguishable from the facts in the present case in two distinct ways. In both the *Sites* and the *Bennett* cases the defendants were physically taken to a private place of questioning. In the *Bennett* case it was the police station, while in *Sites* the defendant was taken from among his friends at his father-in-law's home and taken to his own home for private questioning. A second and more controlling element is clearly present in both situations. The police had information in their possession that made the person a definite suspect. In *Sites* the police had a description of

a car similar to the defendant's that had been seen in the victim's driveway at the time of the murder. The police already knew that the defendant had not been home during the time the murder was allegedly committed and most importantly they were able to observe the defendant's hand as being badly swollen and lacerated as if he had been involved with a beating. In *Bennett* the police had conflicting statements from the defendant as to his whereabouts on the night in question as well as the results of a polygraph test at which accusatory type questions were asked of the defendant.

In the present case neither of the above elements are present. The defendant voluntarily came to the Public Safety Building upon receiving information that the police wanted to talk to him. The only information that the police had at this time was that a fingerprint of the defendant had been found on a beer can in the victim's bedroom. Defendant was called in to see if he could shed any light on the circumstances surrounding the case. After fifteen or twenty minutes of general background questioning, the defendant was asked if he had seen the victim recently. He replied that he had not; that he had never been to his apartment and denied even knowing where he lived. From the unsolicited answers the investigating officer suspected that the defendant was criminally involved and the questioning was immediately suspended and the defendant was given his proper *Miranda* warnings. Had the defendant not trapped himself, the police would never have had a case against him. By telling a lie, the defendant involved himself. Up until this time no accusatory type questions had been asked of him. However, when he told a lie, he immediately became a suspect.

It would work a great hardship to the cause of law enforcement and crime detection to expect the police to do anything more than they did in the present situation. *Miranda* does not require that all persons questioned by the police be advised of their rights. Only those who by reason of investigation have the accusatory finger pointed at them need be advised of their rights. Thus, in examining the record of a suppression hearing we find no error and hold that the confession was properly admitted for the consideration of the jury under proper instructions.

The Commonwealth's case in chief consisted of two vital elements: Circumstantial evidence linking the defendant to the murder and the defendant's confession. The circumstantial evidence produced by the Commonwealth can be summarized as follows:

Around 8:00 A. M. on the day of the murder, the victim's sister answered a telephone call for her brother and recognized the voice as that of the defendant. At 9:30 A. M. the defendant took out a loan of $250.00 from the Century Federal Savings & Loan Association. At approximately 10:00 A. M. the victim and the defendant were seen walking away from a grocery store near the victim's apartment. The victim's sister returned home from work at 5:00 P.M. and noticed that the house had been ransacked. She testified that a TV set and a record player were taken. She then proceeded upstairs to the bedroom and discovered the victim's body lying on the bedroom floor. The body was tied up with neckties so that the hands, feet, and neck were all tied together. When the victim struggled with his hands and legs to get free, he chocked himself. The Pathologist testified that although various bruises

and superficial wounds were found on the body of the victim, the cause of death was asphyxiation due to strangulation caused by the presence of ligatures (ties) around the neck. The police investigation revealed the fingerprints of the defendant were found on a beer can in the victim's bedroom. A search of the victim's bedroom uncovered no trace of the money he had borrowed.

The second element of the Commonwealth's case is the defendant's taped confession. In it the defendant related that he went to the victim's apartment to do some pornographic art work for the victim. After he drank some beer, the defendant went up to the victim's bedroom whereupon the victim made some unnatural advances toward him. The defendant beat the victim and hog-tied him and proceeded to rob and ransack the house.

The defendant testified that he was threatened and abused and was coerced into confession. He also alleged that his girl friend was threatened that she would be arrested if he did not confess. His girl friend, Pat Thompson, was called as a witness but she did little to substantiate his testimony. Three police officers in rebuttal were called to testify and they all denied the use of any abusive or coercive tactics in obtaining the confession. In the final analysis the voluntary nature of the taking of the confession was left to the province of the trier of facts. What made the confession believable was the exacting detail in which the defendant described the way he had tied the victim and the description of what he had taken from the victim's apartment. The playing of the taped confession in open Court and the ability of the jury to listen to the demeanor of the defendant's answers did much to dispel any notion of coercion.

*Appendix B—Opinion of the Court of Common Pleas of Allegheny County, Pennsylvania.*

The issue of the voluntary nature of the confession, like any other fact, was for the jury to determine. The testimony of the defendant clearly contradicted that of the police officers. The jury found fit to believe the police officers. Since credibility is a matter for the trier of facts and because the defendant lost on the question of credibility affords no basis for the granting of either a motion for a new trial or in arrest of judgment. *Commonwealth v. Burns, Appellant,* 198 Pa. Superior Ct. 208, 182 A. 2d 232 (1962); *Commonwealth v. Newcomer, Appellant,* 183 Pa. Superior Ct. 432, 232 A. 2d 731 (1957).

In reviewing the sufficiency of the evidence to support a conviction we must review the entire record in the light most favorable to the Commonwealth. *Commonwealth v. Johnson Appeal,* 445 Pa. 270, 284 A. 2d 780 (1971); *Commonwealth v. Lawrence,* 428 Pa. 188, 236 A. 2d 768 (1968). We must determine whether the fact finders could :easonably have found all of the elements of the crime established beyond a reasonable doubt. Section 701 of the Penal Code of 1939, as amended, provides:

> "All murder . . . which shall be committed in the perpetration of, or attempting to perpetrate any arson, rape, robbery, burglary, or kidnapping shall be murder in the first degree."

In examining the evidence in the present case, the description of the robbery and ransacking of the apartment described by the sister of the victim matched the description given by the defendant of the articles taken in his confession. The *corpus delecti* was established by the Pathologist as well as the police, and the cause of death was determined to be

asphyxiation due to strangulation caused by ties around the neck. Circumstantial evidence linked the defendant to the scene of the crime at the approximate point of time of its commission. In view of these circumstances, there can be little doubt that the trier of facts had sufficient evidence to find that this murder occurred in the perpetration of a robbery and would thus fall under the felony murder doctrine. A careful review of the entire record justifies a finding of murder in the first degree and we find no grounds for error to support the motions of the defendant for a new trial or in arrest of judgment.

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## ORDER OF COURT.

IN THE COURT OF COMMON PLEAS
of Allegheny County, Pennsylvania
Criminal Division

COMMONWEALTH OF PENNSYLVANIA,
vs.
RONALD O'SHEA.

No. 101
January Sess. 1972
(Murder)

AND NOW, this 21st day of July, 1972, after argument and upon consideration of the reason advanced for the motions for a new trial and in arrest of judgment, IT IS ORDERED AND DIRECTED that the same be and are hereby denied.

By the Court,

FIOK, *J.*

[9]

## Appendix C.

### EXCERPTS FROM SUPPRESSION HEARING TRANSCRIPT.

Q. I know that. October 29; am I correct? Or was that before? A. Actually it was the 28th. We went there approximately 9:00 p.m. on the 28th, and this was when we left our card with a girl who lived at that address on Jefferson Street; and about midnight is when Mr. O'Shea called the Public Safety Building and understood that we wanted to see him, and then he came in approximately 12:30, 12:35 on the 29th.

Q. When did he call, sir? A. He called around midnight.

Q. On the 29th? A. Yes, sir.

Q. Or the 28th, whichever it was? A. I'm not sure if it was before or after midnight.

By Mr. McVerry:

Q. In any event, you made it known at Mr. O'Shea's residence that you wanted to see him, and he called into the station and came in sometime in the vicinity of 12:30 a.m., October 29? A. Yes, sir.

Q. Were you on duty in the Homicide Office at that

• • •

[12] that you then determined that he was a suspect, at which time you then advised him of his constitutional rights? A. Yes, sir.

Q. Do you have any independent recollection as to when that took place? A. Approximately 12:50, I would say.

Q. Would your form that you read to him and advised him of his rights indicate the time? A. Yes, sir.

Mr. McVerry: Yes, Your Honor, it does.

The Court: All right. Just preliminary questions.

*Appendix C—Excerpts From Suppression Hearing Transcript.*

By Mr. McVerry:

Q. Mr. Pampena, I show you what has been marked for identification purposes as Commonwealth's Suppression Exhibit No. 1 and ask you if you can review that document and identify it? A. Yes, sir.

Q. What is it? A. This is a Pre-Interrogation Warning Form which I read to Mr. O'Shea.

• • •

[14] Exhibit No. 1 be introduced into evidence.

The Court: Do you wish to interrogate the witness in connection with that before the Court rules on the admission of that Exhibit?

By Mr. Litman:

Q. Officer Pampena, you have that the custody began 12:50 and—

The Court: I can't hear you.

Q. I'm sorry. You have on the form that the custody began at 12:50 a.m.; is that correct? A. Yes, sir.

Q. And that the warning was read at 12:52? A. Yes, sir.

Q. You mean that you had a two-minute conversation before the defendant made something? A. No, sir.

Mr. McVerry: Excuse me. Your Honor, I don't like to interrupt, but I don't see where this questioning goes to the admissibility of this document into evidence, as it has properly been identified by the officer. I think that

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[36] Public Safety Building at 12:35 a.m.; right? A. Yes, sir.

Q. At that time you were accompanied by Officers DeShantz and McKay; is that correct? A. Yes, sir.

Q. Now, you talked, according to this, until 12:50. That's fifteen minutes? A. Yes, sir.

Q. And the defendant said something that caused him to become a suspect, so you then advised him of his rights two minutes later, is that correct? A. Yes, sir.

Q. Then is it correct, Officer, that from 12:52 until 2:33 you, officer DeShantz and Officer McKay interrogated the defendant? A. Yes, sir.

Q. Now, were you present during this entire interrogation? A. Yes, sir, I believe so.

Q. You never left the room? A. To the best of my knowledge, I did not.

The Court: To be absolutely certain that we are talking about the same thing,

* * *

[48] FURTHER REDIRECT EXAMINATION

By Mr. McVerry:

Q. Let me ask you a few more questions. His Honor appears to be perplexed. During the hour and a half before he visited with his girl friend did he at any time admit that he in fact killed Thomas Washington? A. No, sir.

Q. Through your conversation did you ascertain—

By the Court:

Q. What specifically did he say in substance that led you to the conclusion of his involvement. What did he say during

this hour and a half interview? A. During the interview he stated that—we asked him if he knew the victim, and he stated that he had not seen the victim—or that he had seen the victim approximately two weeks prior to his death, and he had seen him down in Market Square and just waved "Hi" to him. We also asked him if he had ever been—or if he knew where the victim lived. He stated No. We asked him if he had ever been to the victim's home. He stated No.

During our investigation at the time of [49] the murder, we uncovered two beer cans which were in the bedroom where the murder had taken place, and on the beer cans the defendant's fingerprints were found.

Q. Did you inform him of that? A. Not prior to him making the statement that he had not been in the victim's home.

The Court: All right.

By Mr. McVerry:

Q. Did you inform him of that the fact that you had his fingerprints in the victim's bedroom prior to the time that his visit with his girl friend was concluded? A. No, sir.

Q. Did you inform him after his visit with his girl friend was concluded that you had his fingerprints in the bedroom? A. Yes, sir.

Q. Did your investigation uncover when those particular beer cans had been purchased? A. Yes, sir.

Q. When had they been purchased? A. The day of the murder.

[50] Q. And in your prior discussions with Mr. O'Shea he told you that he had never been to the victim's home? A. That's correct.

*Appendix C—Excerpts From Suppression Hearing Transcript.*

Q. After he had his visit with the girl friend, you talked to him for some period of approximately 21 minutes before the taped confession began; is that correct? A. Yes, sir.

Q. Was it in that period of time that you advised him that you had his fingerprints in the defendant's bedroom? A. Yes, sir.

Q. And is that when he indicated—

The Court: What, if anything, did he then say?

Q. All right. What, if anything, did he then say? A. Once we advised him that we did have his fingerprints in there, I guess he realized that we caught him in a lie—

By the Court:

Q. No, not what he guessed or realized. What did he say? [53] and at that point he severed relationship with him; and that he had not seen him again until two weeks prior to his death, at which time he saw him down on Market Square. He waived "Hi" to him, and that was the extent of his seeing the victim.

By Mr. McVerry:

Q. This information was secured or gotten by you through questions and answers over this period of time; is that right? A. Yes, sir.

Q. Did you also question Mr. O'Shea with respect to his own background at all? A. Yes, sir.

Q. Did you question him with respect to his involvement or association with Miss Thompson at all during that period of time? A. Yes, sir.

Q. Did you question him about other things of a general or specific nature at all? A. Yes, sir.

Q. Was this conversation transcribed or taken down by anybody or taped? A. No, sir.

* * *

[55] A. We had the fingerprint prior to the time that he was called in.

Q. Yes, but listen to the question and, when you answer, be sure you know what you are talking about.

By Mr. Litman:

Q. You had the fingerprint on the beer can at the time you went looking for Mr. O'Shea initially; is that right. A. Yes, sir, that's right.

Q. You also had his criminal record and the record of his probation or parole board; is that right? A. Yes, sir.

Q. And you had a history of him? A. Yes, sir.

Q. So this initial conversation that you had with him prior to when you say he made something that you felt implicated him in the crime was unnecessary; is that right? You knew that he was a suspect in this crime at the time that you requested him to come in? A. No, sir.

Q. No, sir? A. No, sir.

[56] Q. The beer can with his fingerprint on it was in the victim's room? A. Well, this indicated that he was in the room, but it didn't indicate that he killed the man.

Q. And he said something to you during this interview before you advised him of what was going on, advised him of his rights or anything, that led you to believe that he was in fact a suspect? A. Yes, sir.

Mr. Litman: I have no further questions.

*Appendix C—Excerpts From Suppression Hearing Transcript.*

FURTHER RE-DIRECT EXAMINATION by Mr. McVerry:

Q. What was it he said in the initial ten to fifteen minutes that led you to believe that he was a suspect and led you to read him those rights? A. Well, he stated that he had not seen the victim, or that two weeks prior to the victim's death was the last time that he had seen the victim, and he had not been in the victim's house and did not know where the victim lived.

By the Court:

Q. I thought you said that that took place at the [57] second conversation that you had with him during this hour and a half? A. No, sir. This was at the beginning. This was the reason we advised him of his rights, when he stated that he did not know where the victim lived and he did not—

Q. You are now saying that that took place in the 15-minute conversation? A. Yes, sir.

By Mr. McVerry:

Q. Did it also re-occur in later conversation? A. Yes, sir, it re-occurred afterward.

FURTHER RE-CROSS EXAMINATION by Mr. Litman:

Q. What did you do for that hour and a half besides discuss the fact that he didn't know where the victim lived and hadn't seen him for the last two weeks? This seems to be the entire extent of the conversation. A. No. There was much more conversation than for the hour and a half period, but this was the part of the conversation that led us to believe that he was a suspect.

* * *

[59] A. That's correct.

Q. Then after you advised him of his rights, the only important or incriminating testimony, in your eyes, made by the defendant in the hour and a half conversation was the same thing: "Yes, I know the victim, but I don't know where he lives. I have never been to where he lives, and I haven't seen him in two weeks"? Nothing else? A. Nothing else that was of an incriminating nature.

Q. Nothing else of an incriminating nature? A. Right. We asked him about the victim. He denied having any part. He denied being involved in the murder. We also talked to him about his job, why he lied to his girl friend as to him having a job. But as far as incriminating, that was the first thing he stated that was incriminating, and that's when we advised him of his rights.

Q. But I want the second conversation, the hour and a half after the advising of rights. Did you go through the same thing all over again?

Mr. McVerry: Your Honor, he has testified two or three times as to what that hour and a half was composed of,

* * *

[65] Yes.

Q. Then when he came into the Homicide Bureau, he was taken back to 222; is that right? A. Yes, sir.

Q. Then you and Lieutenant Pampena went back and had a conversation with him for approximately fifteen minutes? A. Yes, sir.

Q. And during this conversation Lieutenant Pampena

asked him certain questions regarding this victim; is that right? A. Yes, sir.

Q. And received certain answers from Mr. O'Shea? A. Yes, sir.

Q. And approximately fifteen minutes later Lieutenant Pampena decided it was time to advise the defendant of his rights and did so; is that correct? A. Yes, sir.

Q. You heard this whole conversation that went on for the fifteen minutes? A. Yes, sir.

Q. This conversation was as to what the defendant knew about this particular victim; is that right? [66] A. Yes, sir.

Q. And Mr. O'Shea admitted knowing the victim? A. Yes.

Q. But stated that he hadn't ever been in the victim's dwelling; is that right? A. Yes, sir.

Q. And that the last time that he had seen the victim had been two weeks ago down on Market Square? A. Approximately two weeks.

Q. And this is when Lieutenant Pampena stopped things and advised the defendant of his rights; is that right? A. Yes, sir.

Q. Thereafter in your presence an hour and a half interview took place; is that correct? A. Yes, sir.

Q. An hour and forty minutes or something like that, and the same things were gone over once again that had been gone over in the 15-minute interview; right? A. They were included in this longer interview.

Q. Did you ever leave Room 222 during this hour and a half conversation?

## Appendix D.

### EXCERPTS FROM TRIAL TRANSCRIPT.

* * *

[120] and Detective Freeman then? A. Yes, sir.

Q. Was this the result of the conversation initiated at 3:17, the interview that initiated at 3:17? A. Yes, sir.

Q. What, if anything, did you do in that conversation that you hadn't done in the prior conversation that ended up in an admission from Mr. O'Shea? A. At that time we then advised Mr. O'Shea that his fingerprints had been found on beer cans at the scene of the crime, and prior to that Mr. O'Shea had stated that he did not know where the victim lived and he had never been to the victim's residence. We confronted him with this information, and at that time he admitted to us that he did it.

Q. Did he describe to you then the manner in which he went to Mr. Washington's house and did away with him? A. Yes, sir, he did.

Q. What, if anything, did you do to perpetuate or make permanent that admission that he gave you with respect to his involvement in Washington's

* * *

[125] A. No, sir.

Q. Did you advise him that he had a right not to talk with you and had a right to have an attorney present if he wanted to speak with you? A. No, sir.

Q. Did you advise him of the right that, if he wanted, he could walk out of there? A. I believe Detective DeShanz mentioned that to him at one time.

Q. You believe? You are not sure that he did? A. I'm not positive, no, sir.

Q. Had he in fact tried to walk out of there, what would have happened? A. We would have let him go.

Q. And then placed him under arrest as soon as he got outside the door; is that correct? A. No, sir.

Q. Here you had clearly a suspect in this murder, because you say you had information that his fingerprints were found at the situs of the crime, and you would have let him go? A. Yes, sir.

Q. And during this 15-minute period you got certain [126] information from Mr. O'Shea, did you not, that caused you at 12:50 to advise him of his rights; is that correct? A. Yes, sir.

Q. You gained certain information that caused you to say, "Well, I'm going too far, he is liable to make an admission to the crime, so we'll just advise him of his rights right now so everything is legal under the law." Is that correct? A. After we received certain information.

Q. After you received certain information from him? A. Yes, sir.

Q. At this point, at 12:50, 12:52, he entered your formal custody? A. Yes, sir.

Q. At 12:50 did you announce to Mr. O'Shea, "You are under arrest in suspicion of murder"? A. We read him the rights at 12:52.

Q. But your sheet indicates, I believe, does it not, that formal custody began at 12:50; is that correct? A. Yes, sir.

Q. At that point did you say, "Mr. O'Shea, you are under arrest for the murder of Thomas Washington"? [127] A. No, sir.

Q. You didn't? A. No, sir.

Q. Then why is 12:50 the time that's marked as formal custody beginning, instead of 12:35 as actually when he came in? A. Actually at that time he became a prime suspect because of the information that he had given us that he had never been to the victim's house.

Q. He wasn't a prime suspect before this when he came in at 12:35 when he had his fingerprints at the site of the crime? A. No, sir.

Q. You had no other fingerprints at this place; is that right? You also had other information, did you not, at this time of people having seen Mr. O'Shea with Mr. Washington? Mr. Loving, you had information from him at that time, didn't you? A. Yes, sir.

Q. But he wasn't a prime suspect until he made these comments to you in the 15-minute interval between 12:35 and 12:50? A. Yes, sir. But the fingerprints indicated that he [128] had been to the house.

Q. And the fact that Mr. Loving had seen him indicated that he had been with Washington the day that he had died; is that right? A. Yes, sir.

Q. And you had other information, other evidence, that made Mr. O'Shea a likely suspect; is that correct? The fact that he denied seeing Mr. Washington that day made him a suspect, whereas if he had admitted seeing him this day he wouldn't have been a suspect? A. That's correct.

Q. He wouldn't have been a suspect? A. He would not have been. If he saw the man, he would not be a suspect merely from seeing the man, or even being with him.

Q. Well, this is in essence what you had: the fact that he had seen him and his fingerprints were on certain beer cans

that were in Mr. Washington's apartment; but certain information that you gained through this talk with Mr. O'Shea caused you to, at 12:50, say, "I've got to stop and advise him of his rights," and at 12:52 you read him his rights; [129] is that correct? A. That's correct.

Q. Now, at this point you questioned him further? You went on more or less just like you had gone on from 12:35 to 12:50 in the interview; is that correct? A. Yes, sir.

Q. Just general conversation, trying to draw something out of Mr. O'Shea, trying to get him to say certain things, to answer certain questions that you could later or at that time cross him up on; is that right? A. Repeat your question, please.

Q. Well, your procedure then was to get Mr. O'Shea to make certain statements of facts that you could either prove or disprove at a later time; is that correct? A. That's correct.

Q. Basically that is what you were doing from 12:35 to 12:50; right? A. Yes, sir.

Q. Now, at approximately 2:30 Mr. O'Shea's girl friend was brought in by Officer Freeman; is that